IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4632 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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HIRA RAVA MORVADIA (HUSBAND OFDECD. REVIBEN HIRA MORVADIA) - Appellant(s)

Versus

KUTCHH SALT & ALLIED IND. LTD & 1 - Defendant(s)

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Appearance :

MR MUKESH H RATHOD for Appellant(s) : 1,
MS SHAILI A KAPADIA for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/07/2007

ORAL JUDGMENT

Hira Rava Morvadia, husband of deceased Smt. Reviben Hira Morvadiya, appellant, original

petitioner, has filed this appeal against judgement and award passed by the Commissioner of Workmen's Compensation, Labour Court, Kachchh dated 14.10.2004 wherein the learned Commissioner of Workmen's Compensation was pleased to reject the claim filed by various claimants in Workmen's Compensation (Fatal) Case No. 44 of 1998.

Heard Mr. Mukesh H. Rathod, learned advocate, for the appellant. He has stated the following facts.

The appellant is the dependant of the deceased workmen. The deceased workman was an employee of respondent No. 2 Kadu Ishaq Kakal who was contractor of respondent No. 1 Kutchh Salt & Allied Ind. Ltd. The appellant is the dependant of the deceased workman as defined under Section 2(1)(d) of the Workmen's Compensation Act, 1923. The appellant is fully and solely dependant of the deceased workman. During the course of employment within the meaning of Section 3 of the Act, death of the deceased occurred due to an accident on 9.6.1998. On 9.6.1998 when the deceased was working with the respondents, at that time, due to drawing in water on account of torrential cyclone which was witnessed by the entire Kachchh region (i.e. vis major) and it was a clear accident occurred during the course of employment of the deceased workman with the respondents. The deceased was an employee of respondent No. 2. There was a relationship of

employer and employee between the respondents and the deceased workman. Therefore, Workmen's Compensation Act is applicable to the facts of the case and the respondents are bound to pay the compensation within one month from the date of accident to the dependants of the deceased. However, respondent No. 2 failed and neglected to make compensation to the appellant herein. Thereafter, the appellant addressed a legal notice on 18.11.1998 and it was served on the respondents. The respondents replied to the said notice on 8.1.1999 but did not pay any amount of compensation to the appellant herein. The respondents did not deposit the amount of compensation before the Commissioner.

In view of the above, the appellant was constrained to file the Workmen Compensation (Fatal) Case No. 19 of 1999 before the Commissioner under the Workmen's Compensation Act, 1923 on 23.4.1999. Before the Commissioner certain preliminary objections were taken. The Commissioner, in view of the preliminary objections, were pleased to pass order on 14.10.2004. By the impugned order, the claim of the present appellant was rejected inter alia on the ground that the appellant is not entitled to such amount of compensation since the appellant is not dependant on the deceased workman as defined under Section 2(1)(d) of the Act.

Being aggrieved by and dissatisfied with the said order, the appellant has filed this appeal on

10.9.2005 with application for condonation of delay. When the application was placed for hearing the delay in filing the appeal was condoned. That is how the matter is placed for hearing before this Court.

Mr. M.H. Rathod, learned advocate for the appellant has relied on the judgement of a Division Bench of this Court in the case of RAYSHI NAGJI KOLI VS. KUTCH SALT AND ALLIED INDUSTRIES LTD. in First Appeal Case Nos. 1653 of 2005 to 1664 of 2005 delivered on 14.7.2005 by this Court (Coram: B.J. Shethna and M.C. Patel, JJ).

When the matter was placed for hearing Ms. Shaili Kapadia, learned advocate appears on behalf of respondent No. 1. Both the learned advocates state that with consent the matter may be taken up for final hearing. Hence I admit the appeal and proceed to dispose of the appeal since Ms. Shaili Kapadia waives notice and is agreeable to the matter being remanded. It may be noted that before the Division Bench in First Appeal Nos. 1653 of 2005 to 1664 of 2005, the issue which has been raised in the present appeal was raised and the Division Bench of this Court in paragraph No. 4 of its order dated 14.7.2005 was pleased to pass the following order:

> “However, she pointed out that in several cases, the same claimant claimed to be the dependant of more than one deceased workman and without prejudice to their contention

that none of the appellants was dependant of any deceased workman, the Commissioner, in any case, cannot hold any claimant to be a dependant of more than one workman. The learned counsel for the appellant also agrees that, in any case, none of them can be held to be a dependant of more than one deceased workman. In view of the above, all these appeals are allowed and the Compensation Case Nos. 63/99, 29/99, 30/99, 31/99, 32/99, 64/99, 65/99, 66/99, 67/99, 68/99, 75/99 and 76/99 are remanded to the Commissioner with a direction to decide afresh whether the claimants were dependants or not after giving an opportunity to the claimants to give evidence and establish their claim as dependants. It will also be open to the respondent to contend that none of the appellants is at all a dependant of any deceased workman and give evidence. It is clarified that, in any case, the Commissioner cannot hold a claimant to be a dependant of more than one deceased workman. The appeals are allowed to the aforesaid extent. The Commissioner shall make every endeavour to dispose of the proceedings at the earliest, preferably within three months from the date of receipt of this order. R & P to be sent down immediately.”

I have been informed that the aforesaid order has been followed by this Court (Coram: M.R. Shah, J) in his order dated 11.4.2007 in First Appeal Nos. 3391 of 2005 with First Appeal No. 3600 of 2006 in the case of Ramju Siddiqum Vs. Kuchchh Salt & Allied Industries Ltd.

In view of the order of the Division Bench dated 14.7.2005 and the order of learned Single Judge dated 11.4.2007, the present appeal is allowed and the compensation case No. 44/1998 and 19/1999 are remanded to the Commissioner with a direction to decide afresh whether the claimants were dependants or not after giving an opportunity to the claimants to give evidence and establish their claim as dependants. It will be open to the respondent to contend that none of the appellants is at all a dependant of any deceased workman and give evidence. It is clarified that, in any case, the Commissioner cannot hold a claimant to be a dependant of more than one deceased workman. The appeal is allowed to the aforesaid extent. The Commissioner shall make every endeavour to dispose of the proceedings at the earliest, preferably within three months from the date of receipt of this order.

(K.M. MEHTA, J)

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